IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4401 OF 1991

Kay Iron Works Pvt. Ltd. a Company incorporated under the Indian Companies Act, having registered office at Jagadhari Road, Yamuna Nagar, HARYANA 135 001 and Maharashtra Unit at B-54, MIDC Area, SATARA 415 004. ..Petitioner

Vs.

1. Union of India Ministry of Labour, New Delhi through its Secretary

2. The Board of Trustees Constituted under the Provident Fund Act through Regional Provident Fund Commissioner, Bhavishya Nidhi Bhavan, Bandra, Mumbai 400 050. ..Respondents

Mr. R.V. Govilkar for petitioner.
None for the respondents.

CORAM: B.H. MARLAPALLE, J.

Date : August 24, 2006.

ORAL JUDGMENT:

1. The petitioner is a Company registered under the Companies Act 1956 with its registered office at Yamuna Nagar, Haryana and an establishment located on

Plot No.B-54, MIDC Area, Satara. It has challenged the legality of the notification issued by the Government of India through Ministry of Labour on 19/10/1990 under Section 5 read with Section 7(1) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (the P.F. Act for short), thereby incorporating certain amendments to the Employees Provident Fund Scheme 1952. In the first amendment the salary limit of Rs.2500/- per month for coverage under the scheme has been enhanced to Rs.3500/- per month and in the second amendment, paragraph 26 has been substituted so that every employee on joining such establishment covered under the P.F. Act would be required to be covered under the scheme right from the first day of his employment rather than waiting for three months. Though the petition was admitted, the prayer for interim relief seeking stay to the impugned notification was rejected.

2. As per the petitioner, it challenges the notification on the following grounds:-

(a) that the employees employed for a short

period that too for a pressing and passing necessity are not employees under the P.F. Act and hence their coverage from the first day of their employment vide the impugned notification is bad in law;

(b) that through the impugned notification the denial of exemption/infancy period of three months to the employees employed by the petitioners and then require them to contribute in respect of such employees employed for a short duration is an unnecessary financial burden on the petitioners and the workmen employed too;

(c) that practically also it is not possible to have the funds back by the employees who worked for a couple of days and contributed a very very short amount towards the Provident Fund but only to swell the exchequer of the Respondent No.2. Such a Scheme could not benefit such casual employees in any way.

3. Section 5 of the P.F. Act states that the Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the establishments or class of establishment to which the said scheme shall apply and there shall be established, as soon as may be after the framing of the scheme, a fund in accordance with the provisions of this Act and the Scheme. The fund shall vest in, and be administered

by, the Central Board constituted under Section 5-A and a scheme so framed may provide for all or any of the matters specified in Schedule-II, subject to the provisions of the Act. A scheme framed may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the Scheme.

4. The Employees' Provident Fund Scheme, 1952 has been framed under Section 5 of the P.F. Act and has been amended from time to time. This power of amendment of the scheme emanates from Section 7 of the P.F. Act which provides for modification of the scheme. The said section reads as under:-

> "7. Modification of Scheme.- (1) The Central Government may, by notification in the Official Gazette, add to amend or vary, either prospectively or retrospectively, the Scheme, the Pension Scheme, or the Insurance Scheme as the case may be.
>
> (2) Every notification issued under Sub-section (1) shall be laid, as soon as may be after it is issued, before each House of Parliament while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the sessions or the successive sessions aforesaid, both Houses

> agree in making any modification in the notification, or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification."

5. It is thus clear that the notification proposing to modify the scheme shall be, as soon as it is issued, laid before each house of Parliament while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the sessions or the successive sessions, both Houses agree in making any modification in the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the notification.

6. The modification of the scheme is a statutory power which the Central Government initially exercises and then the notification is placed before each of the

House of the Parliament for its ratifications. Thus, the notification, though initially indicates in executing intentions in amending the scheme, it subsequently reflects the people's will through both the Houses of Parliament.

7. In the instant case, the modifications to raise the salary limits from Rs.2500/- per month to Rs.3500/- per month has not been challenged in the instant petition and what is under challenge is the replacement of the old paragraph 26 by the new one. In the old paragraph, new employees joining an establishment covered under the Act were to be covered under the Scheme after three months of their service and by the amended modifications this has been done away and it has become now mandatory that as soon as a new employee joins any such establishment, he will be covered under the Scheme right from the first day of his service. It is also clear that the salary limit of Rs.3500/- per month has been raised to Rs.6500/- by the notification dated 4/3/2001. The PF Act is an Act to provide for the institution of provident funds, pension fund and deposit - linked insurance fund for

employees in factories and other establishments. It is basically a welfare legislation so as to provide for the future of the employee in the factories and other establishments. The impugned amendments guarantee that such employees would not be required to wait for three months and they would get the benefits of the scheme right from the first day of the employment. The apprehensions expressed by the petitioner may be applicable in a very negligent number of cases but when the Government effects new modifications to the P.F. Scheme, their larger impact on the welfare of the working class and more particularly in the private sector is required to be seen. In any case there is no guarantee that such dropouts within the period of initial three months would not join another establishment which is covered under the Act and, therefore, there will be continuity in employment and his account will be just transferred with the new establishment. There is no question of refund to such dropouts joining another establishment which is amenable to the Act and the Scheme. Hence the grounds of challenge raised by the petitioner do not make out a case to hold that the impugned notification is erroneous or without authority in law

or in any way anti-labour. As noted earlier, the Government of India has the power under Section 7(1) of the P.F. Act to modify the Employees' Provident Scheme 1952 from time to time.

8. Hence the challenge raised in this petition is devoid of merits and, therefore, the petition is dismissed. Rule discharged. No costs.

(B.H. Marlapalle,J.)